MIKE KREIDLER
STATE INSURANCE COMMISSIONER

**DECLARATION OF MAILING**
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or [illegible] delivery of a true copy of this document to parties listed below
DATED this 25th day of June 2007 at Tumwater, Washington.
Signed: Wendy Galloway

**STATE OF WASHINGTON**

**OFFICE OF**
**INSURANCE COMMISSIONER**
**HEARINGS UNIT**
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**STATE OF WASHINGTON**
**OFFICE OF INSURANCE COMMISSIONER**

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| **In the Matter of:**<br><br>**MICHAEL A. HOWELL and MICHAEL A. HOWELL INSURANCE AGENCY,**<br>**Licensees.** | **NO. D07-23**<br><br>**FINAL FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER ON HEARING** |

TO: Michael A. Howell
114 Wallace Street
Combined Locks, WI 54113

and

Michael A. Howell Insurance Agency
220 S. Ash
Moses Lake, Washington 98837

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington (OIC) on May 7, 2007, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The OIC appeared pro se, by and through OIC Staff

Attorney Marcia Stickler. Michael A. Howell appeared pro se, representing himself and his insurance agency, Michael A. Howell Insurance Agency. Pursuant to RCW 34.05.449, by agreement of the parties and by discretion of the undersigned based upon the nature of the issues involved herein, this hearing was held by telephone.

## NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the OIC's Order Revoking Licenses, No. D07-23, entered by the OIC on January 12, 2007, should be confirmed, set aside or modified. Said Order Revoking Licenses revokes the insurance agent's license of Michael A. Howell (Licensee) and the insurance agency license of the Licensee's agency, Michael A. Howell Insurance Agency, based upon the facts alleged therein. The Licensee requested this hearing to contest this Order Revoking Licenses.

## FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the State of Washington have been satisfied.

2. The Licensee, during all times pertinent hereto, was a resident of Moses Lake, Washington. He has held property, casualty, life, and health insurance agent's licenses, and acted as an insurance agent, in the state of Washington for approximately 13 years. The Licensee worked as an independent agent representing Farmers Insurance Group (Farmers) and Foremost Insurance Company, which is owned by Farmers. Most of his insurance business is through Farmers, where premiums received are deposited directly into a Farmers' account. With regard to receipt of premiums for the Foremost insurance business, the Licensee handled these funds himself. [Testimony of Manum.]

3. By prior notice given on or about October 2, 2006, on October 17 and 18, 2006, the OIC conducted a random audit of the Michael A. Howell Insurance Agency.

4. In his career as an insurance agent of over ten years, representing over 2000 policies and writing over five million dollars in premium, the Licensee has had no complaints or disciplinary orders filed against him. [Testimony of Licensee.]

5. Approximately 99% of the Licensee's insurance business is transacted with Farmers, which requires that premium deposits be made immediately into a designated Farmers' account from which these funds are swept regularly. The OIC's audit revealed no deficiencies with the funds relating to the Licensee's Farmers business. [Testimony of Manum.]

6. Approximately 1% of the Licensee's insurance business is transacted with insurers other than Farmers. In this portion of his business, as opposed to how the Farmers' premium funds were handled by means of direct deposit, the Licensee was responsible for receiving premium funds from consumers, depositing them into his separate premium fund account, and remitting them to the insurer in a timely fashion. [Testimony of Manum.] When requested by the OIC, the Licensee was unable, with regard to the non-Farmers business, to account for receipt of premiums and was unable to produce complete agency bank records upon request. Between January 2003 and October 2006, the Licensee used funds from his separate premium account to pay for personal expenses. Specifically, some premium funds were received from consumers and properly deposited into the Licensee's separate premium account but later withdrawn for personal use [Testimony of Manum; Ex. 3, green highlights]. In other instances, some consumers' premium funds were not deposited but later a check was written on their accounts to pay the insurer [Testimony of Manum; Ex. 3, pink highlights]. In other instances, premium funds were properly deposited into the Licensee's separate premium account but no check was issued in that amount [Testimony of Manum; Ex. 3, yellow highlights]. In other instances, operating expenses, e.g. rent, supplies, were paid out of the Licensee's separate premium account [Testimony of Manum; Ex. 3, blue highlights].

7. Subsequently, as of September 30, 2006, the separate premium account was not being used to receive premiums or pay companies. [Ex. 3.]

8. Although it is clear that the Licensee failed to properly maintain his separate premium account, there is no evidence that any consumers, or insurers, were not paid (whether return premiums or premiums) in a timely way, or that anyone was injured by the Licensee's activity. Further, the Licensee has never filed a claim on his errors and omissions policy or, as above, had a complaint filed against him. [Testimony of Licensee.]

9. Based upon the above Findings of Facts, the Licensee commingled and failed to separate and account for funds received for premiums.

10. Based upon the above Findings of Facts, the Licensee has clearly been disorganized and failed to properly maintain and use premium funds produced by the non-Farmers insurance business he conducted. However, based upon the totality of facts found above, it cannot be found that the Licensee has shown himself to be untrustworthy and a source of injury and loss to the public or not qualified to be an insurance agent in the State of Washington.

11. Mary Manum, an investigator with the OIC, appeared as a witness for the OIC. Her testimony was detailed, clear and credible, and she exhibited no apparent biases.

12. Michael A. Howell, the Licensee, appeared as the sole witness on his own behalf. His testimony was clear and credible. The Licensee, both in his written Demand for Hearing and in his testimony at hearing, admitted his failings in maintenance and use of premium funds.

13. Based upon the activities of the Licensee as set forth in the facts found herein, it is here found that the Insurance Commissioner's Order Revoking Licenses, No. D07-23, entered January 12, 2007, should be modified to instead impose a suspension of three months.

14. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses have not been addressed. In recognition of the question that this recent case law raises, however, the undersigned has applied both the "clear, cogent and convincing" standard of proof and the "preponderance of the evidence" standard of proof, and finds the above facts under application of either the lower or the higher standard of proof.

## CONCLUSIONS OF LAW

1. Pursuant to the Findings of Facts above, the Licensee received premiums in his fiduciary capacity and failed to promptly account for them, in violation of RCW 48.17.480(2).

2. Based upon the Findings of Facts above, the Licensee diverted or appropriated funds received in a fiduciary capacity to his own use, in violation of RCW 48.17.480(4).

3. Based upon the Findings of Facts above, the Licensee received funds representing premiums in his fiduciary capacity and failed to account for them and maintain them in a separate account from all other business and personal funds in violation of RCW 48.17.600(1), commingled premiums with other moneys in violation of RCW 48.17.600(2) and in doing so also violated WAC 284-12-080.

4. Based upon the Findings of Facts above, it cannot be found that the Licensee has, by this conduct, shown himself to be untrustworthy or a source of injury or loss to the public or not qualified to be an insurance agent in the State of Washington as contemplated by RCW 48.17.530(1)(h).

5. Based upon the Findings of Facts herein, and Conclusions of Law directly above, it is hereby concluded that the Insurance Commissioner's Order Revoking Licenses, No. D07-23, entered against Michael A. Howell and Michael A. Howell Insurance Agency on January 12, 2007, should be modified to instead impose a suspension of 90 (ninety) days from the date of entry of this Order.

## ORDER

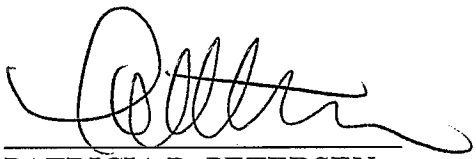
Based upon the above Findings of Facts and Conclusions of Law,

**IT IS HEREBY ORDERED** that the OIC's Order Revoking Licenses, No. D07-23 entered January 12, 2007, is modified to impose a 3 (three) month suspension of the insurance agent's license of Michael A. Howell and Michael A. Howell Insurance Agency instead of a revocation of those licenses. Said period of suspension shall begin on the date of entry of this Order and end 90 (ninety) days from date of entry of this Order.

The undersigned understands that the Licensee has already surrendered his insurance agent's license and his agency's agency license to the Insurance Commissioner. However, if this has not been done then the Licensee is further ordered to surrender these licenses to the Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255 by close of business by July 2, 2007, with return of these licenses to be at the end of 90 (ninety) days from the date of entry of this Order.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210 and RCW 48.04.010.

This Order is entered at Tumwater, Washington, this 25th day of June, 2007.



**PATRICIA D. PETERSEN**
**PRESIDING OFFICER**

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the paralegal to the presiding officer.